



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 2, 1998

Mr. Rusty Renfroe, CLA
City Attorney's Office
City of Longview
P.O. Box 1952
Longview, Texas 75606-1952

OR98-2358

Dear Mr. Renfroe:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 118475.

The City of Longview (the "city") received a request for the amount of money spent on outside counsel legal expenses which the city has incurred for six pending lawsuits. In response to the request, you submit to this office for review a representative sample of the information which you assert is responsive.¹ You state that city is releasing to the requestor "the amounts paid out in settlement for the years 1994 - 1997," and information concerning a lawsuit which has concluded. However, you seek to withhold the submitted responsive information pursuant to section 552.103 of the Government Code. We have considered the exception you raise and reviewed the submitted information.

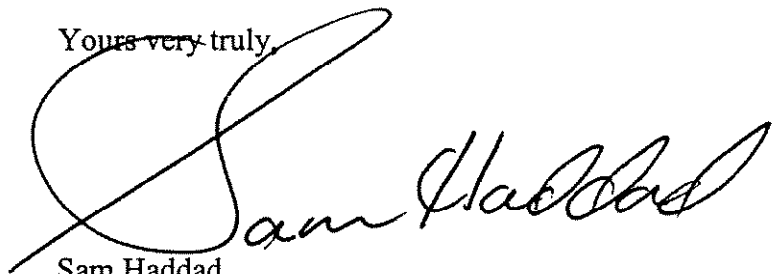
To secure the protection of section 552.103(a), a governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

You explain that the city is currently involved in pending litigation in six lawsuits. You have provided this office with a representative sample of the pending complaints and pleadings. You explain that "[t]he City will exert its right to recoup its attorney's fees and/or costs . . . [which] is also directly related to the pending litigation." In this instance, you have made the requisite showing that much of the requested information relates to pending litigation for purposes of section 552.103(a). We conclude that the city has met its burden of demonstrating that the time, dollar amount, and descriptions of the services associated with the legal representation of the city are related to pending litigation and, therefore, may be withheld under section 552.103.² However, you may not withhold the dates of services and the initials of the providers associated with the outside legal representation of the city under section 552.103(a).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Sam Haddad". The signature is fluid and cursive, with a large loop at the beginning.

Sam Haddad
Assistant Attorney General
Open Records Division

SH/mjc

Ref.: ID# 118475

Enclosures: Submitted documents

²Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. In addition, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

cc: Joe Lee Hammer
Reporter
Longview News-Journal
P.O. Box 1792
Longview, Texas 75606
(w/o enclosures)